

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re Scotts EZ Seed Litigation

Civil Action No. 12-CV-4727 (VB)

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO PRECLUDE  
DOUGLAS SOLDAT FROM OFFERING ANY EXPERT TESTIMONY ON THE  
PERFORMANCE OF EZ SEED AT HALF WATER RATES**

Dated: June 30, 2016

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*Class Counsel*

**I. DR. SOLDAT CANNOT OPINE ON THE PERFORMANCE OF EZ SEED AT HALF WATER RATES**

Scotts has submitted an expert report by Douglas Soldat, Ph.D. [REDACTED]

[REDACTED] Marchese Decl. Ex. TTT, Soldat Report ¶ 2. He offers no opinion on whether EZ Seed grows 50% thicker with half the water, or whether it grows at all.

Dr. Soldat did not plant EZ Seed and did not grow grass with EZ Seed. Instead he packed it into [REDACTED]

[REDACTED] *Id.* ¶ 16. He [REDACTED]

[REDACTED] *Id.* This amount of water is [REDACTED]

*See* Marchese Decl. Ex. YY, 6/30/16 Karcher Decl. ¶ 20.

He placed some of these cylinders on [REDACTED] Soldat Report ¶ 15. Others [REDACTED] *Id.* [REDACTED]

[REDACTED]. *See id.* ¶¶ 20-23.

Having done all this, Dr. Soldat found [REDACTED]

[REDACTED] *Id.* ¶ 24.

Dr. Soldat's failure to find such evidence is not relevant. Nor is it an appropriate topic on which an expert should be permitted to opine.

In any event, Dr. Soldat did not test EZ Seed at half-water levels, so his tests are not relevant to any issue in this case. Nor did he test EZ Seed's ability to germinate, so he should not be permitted to opine on the existence or non-existence of evidences concerning its ability to germinate. [REDACTED]

■: [REDACTED]  
[REDACTED]  
■ [REDACTED]

Marchese Decl. Ex. XX, Soldat Dep. at 108:24-109:2.

For these reasons, Dr. Soldat should be precluded under Fed. R. Evid. 401 and 702 from offering any testimony concerning EZ Seed's performance of EZ Seed at half-water rates, or EZ Seed's ability to germinate under any conditions. The entirety of his analysis is based on samples irrigated at more than ten times the recommended rate for ordinary seed, which renders the entirety of his report irrelevant to this action.

Dated: June 30, 2016

Respectfully submitted,

By: /s/ Scott A. Bursor  
Scott A. Bursor

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